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[Additional counsel appearing on signature block]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**Daniel DeClements**, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

**My Home Group Real Estate, LLC**, an  
Arizona limited liability company,

Defendant.

NO.

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Daniel DeClements (“Plaintiff DeClements” or “DeClements”) brings this Class Action Complaint and Demand for Jury Trial against Defendant My Home Group Real Estate, LLC (“Defendant” or “My Home Group”) to stop My Home Group from directing, or at the very least ratifying, My Home Group’s realtors’ violations of the Telephone Consumer Protection Act (“TCPA”). Specifically, at My Home Group’s direction and/or with My Home Group’s knowledge and for My Home Group’s benefit, My Home Group realtors purchase leads lists for real estate listings and autodialers with the ability to deliver prerecorded voice messages specifically marketed to the real estate industry to solicit real estate listings from consumers without the consumers’ consent.

In this case, Plaintiff DeClements received an autodialed and/or prerecorded voice call from a My Home Group realtor soliciting Plaintiff’s property listing. As a result, Plaintiff seeks

1 to obtain injunctive and monetary relief for all persons injured by My Home Group's  
2 endorsement and ratification of this pernicious telemarketing. Plaintiff, for this Complaint,  
3 alleges as follows upon personal knowledge as to himself and his own acts and experiences, and,  
4 as to all other matters, upon information and belief, including investigation conducted by his  
5 attorneys.

6  
7 **PARTIES**

8 1. Plaintiff Daniel DeClements is a resident of Rio Verde, Arizona.

9 2. Defendant My Home Group is an Arizona limited liability company  
10 headquartered at 8360 E Raintree Dr #205, Scottsdale, AZ 85260. Defendant conducts business  
11 throughout this District and the United States.

12 **JURISDICTION AND VENUE**

13 3. This Court has federal question subject matter jurisdiction over this action under  
14 28 U.S.C. § 1331, as the action arises under the TCPA.

15 4. This Court has personal jurisdiction over Defendant and venue is proper in this  
16 District under 28 U.S.C. § 1391(b) because Defendant is incorporated and headquartered in this  
17 District and because the wrongful conduct giving rise to this case was directed from and/or  
18 occurred in this District.

19 **MY HOME GROUP DIRECTS REALTORS TO USE PURCHASED LEADS LISTS AND**  
20 **AUTODIALERS CAPABLE OF DELIVERING PRERECORDED VOICE MESSAGES**  
21 **TO SOLICIT REAL ESTATE LISTINGS FROM CONSUMERS**

22 5. My Home Group is a residential real estate brokerage that assists consumers in  
23 buying/selling properties throughout locations all over the U.S.  
24

1           6.       My Home Group provides its realtors with tools that it deems necessary to  
2 succeed in the real estate industry, ensuring that realtors are consistent in fulfilling My Home  
3 Group's overall marketing plan.<sup>1</sup>

4           7.       Training is provided to realtors directly from My Home Group's head office, as  
5 well as online through Facebook and YouTube.

6           8.       My Home Group encourages its realtors to purchase systems such as RedX and  
7 Mojo through its training courses that include leads lists bundles with autodialers specifically  
8 marketed for soliciting real estate listings, and to use these systems to telemarket to consumers  
9 without consent.

10           9.       RedX sells realtors lists of real estate leads based on expired listings and for sale  
11 by owner listings together with an autodialer capable of, among other things, delivering  
12 prerecorded voice messages.

13           10.      Expired listings are properties that were once listed on a Multiple Listing Service  
14 ("MLS") by a realtor on behalf of a seller that did not sell before the listing agreement between  
15 the seller and the realtor expired. For expired listings, RedX and similar services perform a  
16 reverse append using public records sources based on the property address and owner name to  
17 associate phone numbers to those expired listings. Those services then sell access to realtors to  
18 those names and phone numbers so that those realtors can call those consumers using an  
19 autodialer or pre-recorded message.

20           11.      For sale by owner listings are properties that are listed for sale by a seller that is  
21 not under contract with a realtor. For 'For Sale by Owner' listings, RedX and other similar  
22

23  
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26  
27 <sup>1</sup> <https://realtorsuccessformula.com/>

1 services scrape addresses, owner names, and phone numbers from various databases and re-sell  
2 access to that information for realtors to call them to solicit their services.

3 12. Because of the manner in which RedX generates expired listing leads (i.e.,  
4 through a process equivalent to skip tracing) and for sale by owner listing leads (i.e., by scraping  
5 information from the internet), the leads RedX (and other services similar to RedX) supplies to  
6 realtors are not leads that RedX or the realtors purchasing the leads have prior express written  
7 consent to telemarket to using an autodialer and/or prerecorded voice.  
8

9 13. My Home Group encourages its realtors to solicit real estate listings by using  
10 systems like RedX.

11 14. In a training session given by My Home Group called “Prospecting with Purpose”  
12 to its realtors on October 17, 2018, My Home Group trainer Steve Castle provides a thorough  
13 training course to My Home Group realtors regarding lead generation and conversion.<sup>2</sup> This  
14 training class was presented at the My Home Group headquarters as part of My Home Group’s  
15 Workshop Wednesday Classes.<sup>3</sup>  
16

17 15. In the video, Castle trains the My Home Group realtors on the importance of  
18 calling consumers with expired listings, attributing at least 50% of his own personal revenue as a  
19 realtor to focusing on calling consumers with expired listings.

20 16. Castle educates the My Home Group realtors in the art of calling expired listings  
21 by mentioning how angry the consumers get from receiving unsolicited realtor calls. Despite the  
22 anger though, Castle explains that most listings will in fact come from these angry consumers.  
23  
24  
25

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26 <sup>2</sup> <https://www.youtube.com/watch?v=IrHQp3PAOIg>

27 <sup>3</sup> <https://www.youtube.com/playlist?list=PLkgaUNVzYdvXA6jYWk0coLkDrxXnrYABf>

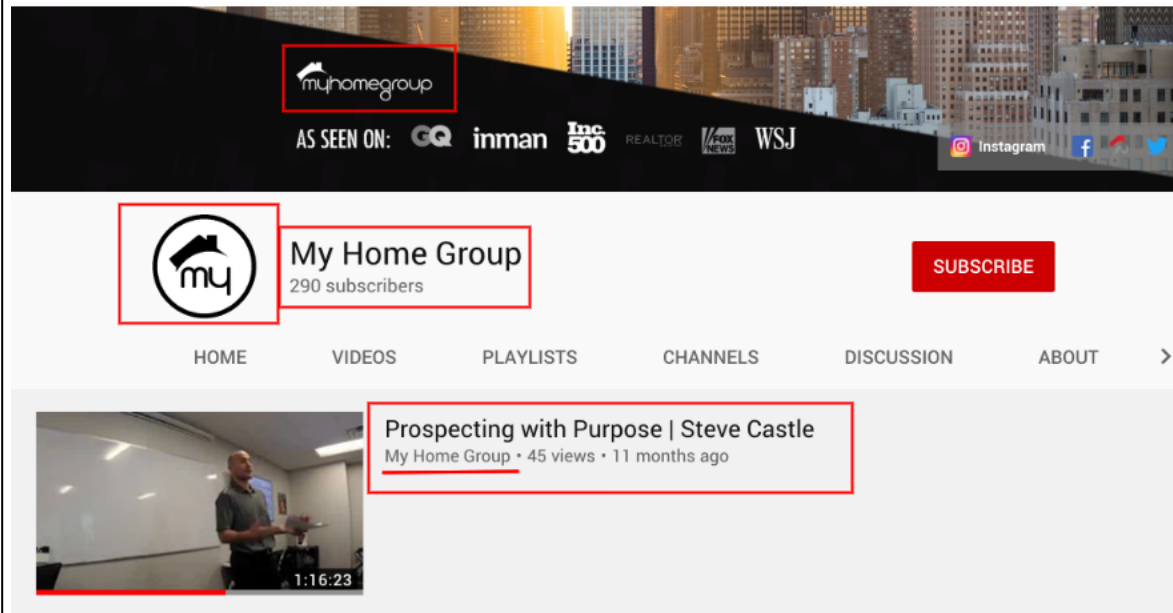
17. Castle then discusses how to source expired leads, explaining that he purchases his leads lists from RedX.

18. Speaking on behalf of My Home Group, Castle strongly encourages the use of RedX in this video explaining that he can get a signed agreement from one out of every 100 expired listing leads that he makes unsolicited marketing calls to.

19. Castle also explains in the video that he uses the Mojo system, which is a RedX competitor. Castle recommends that My Home Group realtors use both RedX and Mojo daily, in order to contact consumers with expired listings.

20. Castle also instructs realtors on using Mojo to record a prerecorded voicemail to be left when consumers do not pick up the realtors' unsolicited calls.

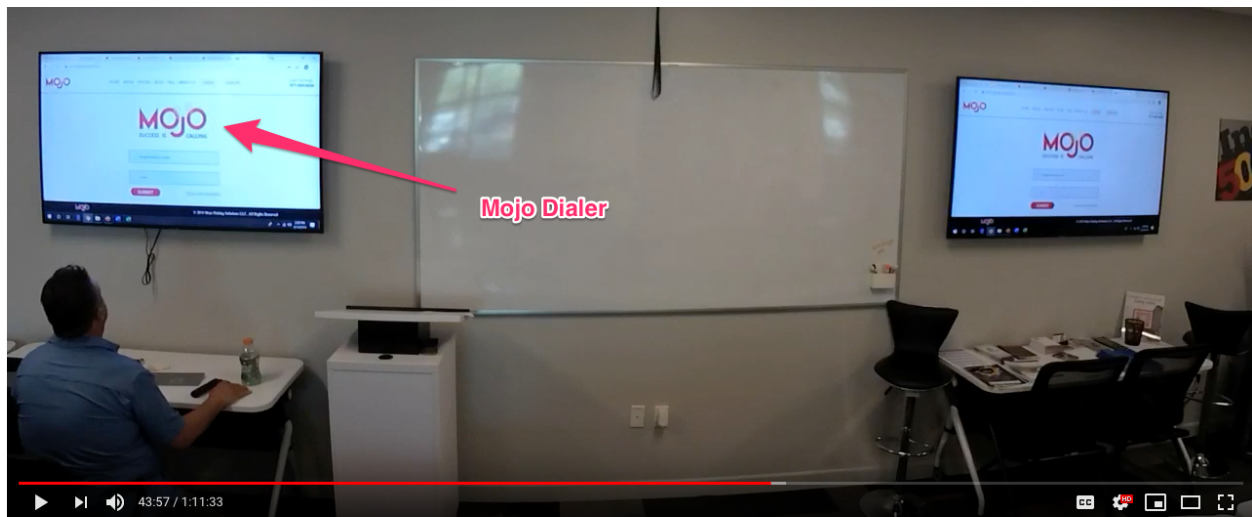
21. The video of Castle's training session was posted on the My Home Group YouTube channel as a tool for training future My Home Group realtors.<sup>4</sup>



<sup>4</sup> <https://www.youtube.com/watch?v=1rHQp3PAOIg>

22. My Home Group provides training at least 3 times a week to its realtors, providing classes about lead generation and different systems that realtors should use, such as RedX and Mojo.<sup>5</sup>

23. For example, in another My Home Group training video entitled “Listing FSBO’s to Increase Your Income,” My Home Group trainer John Doering trains realtors on using the Mojo system. This training session was given at the My Home Group headquarters.



Listing FSBO'S to Increase Your Income | John Doering

16 views • Published on Aug 14, 2019

0 0 SHARE SAVE ...

24. In another My Home Group training class entitled “What is the Right CRM for You?” My Home Group’s trainer advises the realtors that they should choose a CRM that works with systems for calling expired listings and for sale by owner listings such as Mojo:

“We call a lot of FSBO’s. We call a lot of Expireds. So we’ve got Mojo. Mojo’s a dialer. It’s a dialing software. We are on there 3 or 4 hours a day. It has to go like that. It has to be seamless.”<sup>7</sup>

<sup>5</sup> <https://realtorsuccessformula.com/calendar/>

<sup>6</sup> <https://www.youtube.com/watch?v=iyTWHr2n2Tc>

<sup>7</sup> <https://youtu.be/cy53P0JlfrY?t=754>

25. In another My Home Group training class entitled “117 Ways to Find a Client,” My Home Group trainer Amanda Sue Briggs promotes realtors’ use of LionDesk, which is a leads management system includes an autodialer able to call, text, and deliver prerecorded voice messages *en masse*:<sup>8</sup>

#### Video Email & Video Texting

The only CRM with integrated Video Emails and Video Texting. Utilize one on one videos, within drips and mass emails/texting.

#### Text 2 Sell

Use a personalized local area code number and create “Short Codes” to highlight on Sign Riders, Flyers and More.

#### Contact Management

Easily manage all types of lead sources, buyers, sellers, hot or cold clients and more by adding an unlimited number of tags to each client.

#### Property Management

Enter your properties and track your closings. Automate your tasks, manage deadlines and don't let anything slip through the cracks.

#### Lead Distribution

Take all the leads yourself, or distribute them to a team based on their performance or the ZipCode of the request.

#### 3rd Party Lead Imports

Take your existing lead sources (Zillow, Trulia, Realtor.com, etc) and send them to LionDesk for an instant response to your client.

#### Calendar/Task Management

Forget worrying about who you should be calling next, because LionDesk will even call you to remind you.

#### Power Dialer

Speed through your call lists quickly and efficiently, and capture all the activity right into your contact records as it happens. (Pricing from \$59/mo.)

#### Facebook Ads Direct

As an approved Facebook CRM Partner you can get your leads directly into LionDesk without the added cost of a 3rd party platform.

#### Scheduled Emails & Texts

Save all of your sales and marketing emails and send to your clients instantly, or put them on a future scheduled campaign.

#### Texting Manager

Managing your texting activity is easy with a comprehensive view of all your contact conversations.

#### Enhanced Drip Campaigns

Manage your automated drip campaigns easily with LionDesk. Don't just email, with LionDesk, your campaigns can include automated texts messages and phone calls.

#### Deal & Pipeline Management

Track your deals and your pipeline...know how close you are to closing it, how much you're making and when.

#### Broker Functions

Brokers: View enhanced reports on leads, create master Drip Campaigns to push to your Agents and have a global view of all deals, properties and contacts in your office.

#### Track Email Results

Know exactly which prospects are most interested in what you're selling with tracking notifications. Know who opens and clicks on your emails.

#### Document Management

Upload your listing presentations, CMA's and more and associate them to a contact for easy access.

#### Click to Call

Save time by clicking instead of dialing and track all of your inbound and outbound calls and text messages.

#### Auto Responders

Send automated emails, texts, and calls to every one of your leads and track your conversions.

26. To promote realtors’ use of LionDesk My Home Group’s trainer advises realtors during the training class that they can get a discount on LionDesk by using a discount code for My Home Group realtors.

27. By training My Home Group realtors to use leads lists and autodialers with the capacity to deliver prerecorded voice messages, My Home Group is directing, or at the least

<sup>8</sup> <https://youtu.be/-DxS--RX9mU?t=1350>

<sup>9</sup> <https://www.liondesk.com/freetrial/>



1 ratifying, realtors' unsolicited telemarketing to purchased leads lists using an autodialer and/or  
2 prerecorded voice.

### 3 **LEGALITY OF AUTODIALED AND PRERECORDED CALLS UNDER THE TCPA**

4 28. As explained by the Federal Communications Commission ("FCC") in its 2012  
5 order, the TCPA requires "*prior express written consent* for all autodialed or prerecorded  
6 [solicitation] calls to wireless numbers and residential lines." *In the Matter of Rules and*  
7 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278,  
8 FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).  
9

10 29. Yet in violation of this rule, My Home Group's realtors failed to obtain any  
11 express written consent prior to placing autodialed and/or prerecorded voice calls to Plaintiff and  
12 other consumers whose contact information the realtors purchased as part of services such as  
13 RedX and Mojo.

14 30. Consumers have voiced many complaints online about receiving unsolicited calls  
15 from My Home Group realtors, many of which indicate the use of an autodialer and/or  
16 prerecorded message call:  
17

- 18 • "This was a first ... received a call from this same number on BOTH my home phone and  
19 cell phone at exactly the same time! Obviously a robo-dialer. Home phone showed "Eric  
Brossart" and the cell phone showed: 'Arizona'." <sup>10</sup>
- 20 • "After hanging up, same person immediately called back with different Arizona  
21 callerID." <sup>11</sup>
- 22 • "Realtor unsolicited call and text" <sup>12</sup>
- 23 • "Real estate message soliciting home sellers." <sup>13</sup>

24  
25  
26 <sup>10</sup> <https://800notes.com/Phone.aspx/1-602-741-6394/2>

<sup>11</sup> *Id.*

<sup>12</sup> <https://www.shouldianswer.com/phone-number/6027416394>

<sup>13</sup> <https://findwhocallsyou.com/6027416394?CallerInfo>



- “this guy is a realtor trying to get homes for him to sell. dont answer his calls, as he is lower [than] whale \*\*\*!”<sup>14</sup>

**AT MY HOME GROUP’S DIRECTION, A MY HOME GROUP REALTOR  
CALLED PLAINTIFF DECLEMENTS USING AN AUTODIALER AND/OR A  
PRERECORDED VOICE WITHOUT PLAINTIFF DECLEMENTS’ CONSENT**

31. On September 2, 2019, Plaintiff DeClements had a property he owned removed from the Multiple Listing Service without a sale.

32. On September 4, 2019 at 12:40 PM, just 2 days after DeClements had the listing removed, he received a prerecorded voice call from a My Home Group realtor using phone number 480-712-9135. The prerecorded voicemail states:

“Hi, my name’s Colin. I’m a local real estate professional. I’m just giving you a quick call because it looks like your property was recently on the market but then left the market unsold. I specialize in properties that are just coming off the market. If you’re curious to know how much your property is still worth, or if you’re thinking about relisting but looking for another professional, I’d love the opportunity to earn your business. Please give me a call back at your earliest convenience. 480-712-9135. Again, 480-712-9135. Thank you and have a wonderful day. Bye bye.”

33. Phone number 480-712-9135 belongs to Colin Slattery, a My Home Group realtor:

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<sup>14</sup> *Id.*



Buy or Sell MyAgents MyTeams

## Colin Slattery



## REAL ESTATE AGENT

Cell: 623.764.5962

Office: 480.685.2760

Fax: 480.736.8410

colin.slattery@btgrealestate.com

<http://myhomegroup.com/>Colin is a native to Phoenix, having lived here his entire life.<sup>15</sup>

34. Plaintiff DeClements has never provided his consent to My Home Group or any of its realtors to be called. Plaintiff also has not consented in any way to being called based on having his contact information included on a leads list sold as part of RedX, Mojo, or another similar service.

35. The unauthorized call using a prerecorded voice made by a My Home Group realtor at My Home Group's direction, has harmed Plaintiff DeClements in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of his cell phone, in addition to the wear and tear on the phones' hardware (including the phones' battery) and the consumption of memory on the phone.

36. Seeking redress for these injuries, Plaintiff DeClements, on behalf of himself and a Class of similarly situated individuals, bring suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited, autodialed and prerecorded voice calls.

### CLASS ALLEGATIONS

37. Plaintiff DeClements brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seeks certification of the following Class:

<sup>15</sup> <https://myhomegroup.com/mhg-realtors/colin-slattery/>

1 All persons in the United States who from four years prior to the filing of this action  
2 through class certification (1) at least one My Home Group realtor called (2) using  
3 RedX, Mojo, LionDesk, or a substantially similar dialer and/or a prerecorded voice,  
4 (3) on their cellular phone number, (4) whose contact information was obtained  
5 from RedX, Mojo, LionDesk or a substantially similar lead generating service.

6 38. The following individuals are excluded from the Class: (1) any Judge or  
7 Magistrate presiding over this action and members of their families; (2) Defendant, its  
8 subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents  
9 have a controlling interest and their current or former employees, officers and directors; (3)  
10 Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion  
11 from the Class; (5) the legal representatives, successors or assigns of any such excluded persons;  
12 and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or  
13 released. Plaintiff DeClements anticipates the need to amend the Class definitions following  
14 appropriate discovery.

15 39. **Numerosity:** On information and belief, there are hundreds, if not thousands of  
16 members of the Class such that joinder of all members is impracticable.

17 40. **Commonality and Predominance:** There are many questions of law and fact  
18 common to the claims of Plaintiff DeClements and the Class, and those questions predominate  
19 over any questions that may affect individual members of the Class. Common questions for the  
20 Class include, but are not necessarily limited to the following:

- 21 (a) whether Defendant's realtors made calls to Plaintiff DeClements and  
22 members of the Class using an autodialer and/or prerecorded voice;
- 23 (b) whether Defendant's realtors made calls to Plaintiff DeClements and members of  
24 the Class without first obtaining prior express written consent to make the calls;
- 25 (c) whether Defendant directed and/or ratified its realtors' use of an autodialer and/or  
26 prerecorded voice for calling cell phone numbers of consumers included on purchased leads lists;
- 27 (d) whether Defendant is liable under the TCPA for its realtors' conduct; and

1 (e) whether members of the Class are entitled to treble damages based on the  
2 willfulness of Defendant's conduct.

3 41. **Adequate Representation:** Plaintiff DeClements will fairly and adequately  
4 represent and protect the interests of the Class, and has retained counsel competent and  
5 experienced in class actions. Plaintiff DeClements has no interests antagonistic to those of the  
6 Class, and Defendant has no defenses unique to any the Plaintiff. Plaintiff DeClements, and his  
7 counsel are committed to vigorously prosecuting this action on behalf of the members of the  
8 Class, and have the financial resources to do so. Neither Plaintiff DeClements nor his counsel  
9 has any interest adverse to the Class.

10 42. **Appropriateness:** This class action is also appropriate for certification because  
11 Defendant has acted or refused to act on grounds generally applicable to the Class and as a  
12 whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards  
13 of conduct toward the members of the Class and making final class-wide injunctive relief  
14 appropriate. Defendant's business practices apply to and affect the members of the Class  
15 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with  
16 respect to the Class as wholes, not on facts or law applicable only to the Plaintiff. Additionally,  
17 the damages suffered by individual members of the Class will likely be small relative to the  
18 burden and expense of individual prosecution of the complex litigation necessitated by  
19 Defendant's actions. Thus, it would be virtually impossible for the members of the Class to  
20 obtain effective relief from Defendant's misconduct on an individual basis. A class action  
21 provides the benefits of single adjudication, economies of scale, and comprehensive supervision  
22 by a single court.

23 **FIRST CLAIM FOR RELIEF**  
24 **Telephone Consumer Protection Act**  
25 **(Violation of 47 U.S.C. § 227)**  
26 **(On Behalf of Plaintiff DeClements and the Class)**

45. These autodialed and/or prerecorded voice calls were made *en masse* without the prior express written consent of the Plaintiff DeClements and the other members of the Prerecorded No Consent Class.

47. Defendant's conduct was negligent, willful, or knowing.

## PRAYER FOR RELIEF

49. An order certifying this case as a class action on behalf of the Class as defined above; appointing Plaintiff DeClements as the representative of the Class; and appointing his attorneys as Class Counsel;

51. An order declaring that Defendant's actions, as set out above, violate the TCPA;

52. An injunction requiring Defendant to stop its realtors' unsolicited calling activity,  
and to otherwise protect the interests of the Class; and

53. Such further and other relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff DeClements requests a jury trial.

Dated: February 19, 2020

/s/ Nathan Brown

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*\*Pro Hac Vice motion forthcoming*